

JOSE G. GONZALEZ

IBLA 80-929

Decided February 6, 1981

Appeal from decision of the California State Office, Bureau of Land Management, rejecting for purposes of recordation the notice of location for mining claim, CA MC 71589.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of an unpatented mining claim located after Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location with the proper Bureau of Land Management Office within 90 days of location of the claim. This requirement is mandatory and failure to comply constitutes conclusive abandonment of the claim by the owner. By regulation the BLM state offices are designated the proper offices for mining claim recordation.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Determination of Validity

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.4, filing recordation documents in a Bureau of Land Management District Office, rather than

the proper State Office, the day of the expiration of the 90-day statutory deadline for recordation does not constitute timely recordation. In such circumstances, the BLM State Office properly rejected the recordation upon receipt of the documents after the 90-day deadline had passed.

APPEARANCES: Jose G. Gonzalez, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Jose G. Gonzalez appeals from the August 5, 1980, decision of the California State Office, Bureau of Land Management (BLM), returning his notice of location for the Jolu-Lujo placer mining claim, CA MC 71589, because he had not filed with BLM within 90 days after the date of location as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the corresponding regulation, 43 CFR 3833.1-2(b). Appellant's claim was located on April 15, 1980. The BLM State Office in Sacramento, California, received a copy of the notice for filing on July 17, 1980, 94 days after the date of location.

In his statement of reasons appellant argues that the claim should be granted in that the BLM Bakersfield District Office, Kern County, California, received notice within 90 days of the location of the claim.

[1, 2] Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location * * *. [Emphasis added.]

The regulations also designate the "proper BLM office" for recording mining claims: "'Proper BLM office' means the Bureau of Land Management

office listed in § 1821.2-1(d) of this title as having jurisdiction over the area in which the claims or sites are located." 43 CFR 3833.0-5(g).

Appellant filed the notice of location within 90 days of the location date but filed it in the BLM District Office in Kern County, California. Appellant should have filed in the BLM California State Office in Sacramento.

Under FLPMA and the regulations, the requirements for filing are clear. The Board has repeatedly held that when a notice of a mining claim is not filed with BLM within 90 days of the date of location, it has no force or effect and must be rejected. Paul B. Rhodes, 48 IBLA 90 (1980); M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978). Such a claim must be deemed conclusively to have been abandoned under the terms of the statute. 43 U.S.C. § 1744(c) (1976); Phillip M. Gardiner, 41 IBLA 391 (1979). When Congress enacted section 314 of FLPMA, supra, it did not authorize any waiver of the 90-day filing requirements. Southern Exploration Associates, 33 IBLA 240 (1977). Appellant filed his notice in the District Office when the plain language of the regulation indicates that it should have been filed in the State Office. By submitting the recordation documents to the District Office on the day of the deadline set by Congress, appellant allowed himself no time to correct his mistake. This does not constitute timely recordation of his mining claim and the BLM State Office properly rejected it.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

